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bents in cities having populations of 100,000, applies to commissioner in chancery and examiner of records of the Tenth judicial district.

[Ed. Note.—For other cases, see Municipal Corporations, Cent. Dig. § 295; Dec. Dig. § 124 (6).\* 11 Va.-W. Va. Enc. Dig. 501.]

Original mandamus proceedings by William H. Sands, Commissioner in Chancery, etc., against C. Lee Moore, Auditor, etc. Peremptory writ ordered.

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SOUTHERN RY. CO. *v.* ADKINS.

Sept. 11, 1916.

[89 S. E. 847.]

**1. Railroads (§ 348 (4)\*)—Operation—Duties to Travelers.**—Evidence held to show negligence of a railroad in causing injuries to plaintiff at a crossing, on the ground that, had the operatives given a warning signal, or kept a lookout, or operated a switch engine at a reasonable rate of speed, the accident would not have happened.

[Ed. Note.—For other cases, see Railroads, Cent. Dig. § 1142; Dec. Dig. § 348 (4).\* 4 Va.-W. Va. Enc. Dig. 128.]

**2. Railroads (§ 350 (13)\*)—Operation—Duties to Travelers—Contributory Negligence.**—Evidence held insufficient to warrant taking the case from the jury on the ground of contributory negligence of plaintiff, injured by a locomotive at a railroad crossing.

[Ed. Note.—For other cases, see Railroads, Cent. Dig. § 1166; Dec. Dig. § 350 (13).\* 4 Va.-W. Va. Enc. Dig. 142.]

**3. Negligence (§ 136 (9)\*)—Questions for Jury.**—Negligence cannot as a matter of law be predicated upon a state of facts upon which fair-minded men might differ.

[Ed. Note.—For other cases, see Negligence, Cent. Dig. §§ 293-297; Dec. Dig. § 136 (9).\* 10 Va.-W. Va. Enc. Dig. 415.]

Error to Circuit Court, Pittsylvania County.

Action by Lewis Adkins against the Southern Railway Company. Judgment for plaintiff, and defendant brings error. Affirmed.

*William Leigh*, of Danville, for plaintiff in error.

*Geo. T. Rison*, of Chatham, for defendant in error.

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\*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.